

IN THE MATTER OF:

BRIAN P. FORSTON
5425 WHITLOCK ROAD
BALTIMORE, MD 21229

RE: DENIAL OF RESERVED
HANDICAPPED PARKING SPACE

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-22-044

* * * * *

OPINION

This case comes to the Board of Appeals of Baltimore County (the “Board”) as the result of the denial of an application filed for a reserved handicapped parking space at 5425 Whitlock Road, Baltimore, Maryland 21229 (the “Property”), as set forth in a letter to the applicant from Kristoffer Nebre, the Acting Chief of the Division of Traffic Engineering, issued on March 21, 2022. On March 29, 2022, a Notice of Appeal was filed by the petitioner, Mr. Fortson. On April 7, 2022, the Board received Mr. Fortson’s timely appeal. On May 25, 2022, the Notice of Assignment was issued by the Board, and a hearing was scheduled for July 21, 2022 via Webex. The Board held the virtual public hearing on July 21, 2022 as scheduled. Baltimore County (the “County”) was represented by Division of Traffic Engineering Supervisor Wes Bohle. Mr. Fortson represented himself via telephone. The issue presented is whether the presence of a garage-like structure on the petitioner’s property constitutes “available” onsite parking.

The County stipulated to Mr. Fortson’s disability as established in a letter to the applicant from Kristoffer Nebre, the Acting Chief of the Division of Traffic Engineering, issued on March 3, 2022. (Exhibit 1A). Mr. Fortson testified that his disability results from knee injuries that required surgery and render it difficult to walk distances or stairs. Mr. Bohle testified that his office received an MVA Application for Personal Residential Permit for Reserved Parking Space for Mr. Fortson and inspected the Property on or about March 14, 2021. Mr. Bohle took a series of

photographs including an aerial view of the entire block which showed that 5425 was in the middle of 11 attached row homes captured in the photograph. (Exhibit 2A). Photographs of the front (Exhibit 2B) and the rear (Exhibit 2C) of the property were included in the report noting that the front of the house has a railing on one side with 6 steps, while the rear of the home has a railing on one side with 18 stairs. The inspection report also noted that the distance from the curb to the front of the house is 37 feet. (Exhibit 2B). The County produced photographs to support its testimony that the distance from the parking rear of the house is 39 feet. (Exhibit 2C) The County further testified that off-street parking is available by using a structure in the rear, described by the County as a "garage (18 ft. wide x 22 ft. length) without gates, garage door 8 foot wide (and) additional parking area on concrete apron in front of garage (20 ft. wide x 6 ft. length)." The County further described the property as an "accessible alley with no apparent issues (Exhibit 2A). The County contends that because the property contained a garage it is available for offsite parking, Mr. Fortson's application should be denied.

Mr. Fortson testified that he is a U.S. Postal carrier who works regularly. He has a documented disability resulting from a left knee replacement and pending right knee replacement that impacts his ability to walk stairs and distances. He has not made any improvements to his home to support his disability and was not aware that the County would have given additional consideration to his application for doing so. He further testified that although there is garage-like structure on the rear of his property, the structure is inadequate and does not constitute on-site parking because it cannot hold a motor vehicle, yet alone his personal vehicle which is a full-size pick-up truck. The structure also cannot provide appropriate distance for ingress or egress for a driver to use the structure for parking purposes. He also testified the garage is not accessible from the alleyway behind the property, because the alleyway is used by a neighboring business and local utility companies that park their vehicles in the alleyway daily blocking access to the structure.

Mr. Fortson provided photographs to support his testimony. He further contends that the lack of residential handicapped parking interferes with his personal tasks and professional work responsibilities. For these reasons, he argues that County's decision be reversed, and the application be approved.

Reversal of a decision of the Baltimore County Division of Traffic Engineering with respect to handicapped parking spaces requires that the Board find that the Applicant meets all of the conditions set forth in Section 8 of the County Policy referred to above as reflected in Exhibit

5. The conditions are as follows:

(A) The applicant and/or their household has taken all reasonable measures to make the off-street parking area usable and available to the disabled applicant.

(B) The disability of the applicant is of such a severe degree that an extreme hardship would exist if the applicant were to use the available off-street parking.

(C) The approval of a reserved on-street space is determined to be one of medical necessity and not one of mere convenience for the applicant.

(D) The hardships placed on the applicant's neighbors by reserving an exclusive on-street space for the applicant is outweighed by the hardship that would be placed on the applicant if the space were not approved.

The Board finds that Mr. Fortson has satisfied each of the required conditions. As indicated above, the Baltimore County policy reflected in Exhibit 5 speaks only of "available" off street parking. One could argue that the circumstances in this matter mean that Mr. Fortson does not have an "available" rear garage parking for the reasons stated above. In other words, the argument would be that because the available space is not "accessible", it is not "available." It would then follow that Section 3(B) is not disqualifying. As an alternative, Section 3(G) permits the Division of Traffic Engineering to grant exceptions to Section 3(B) under certain circumstances even if the rear is considered as an "available" parking area. Here, the conditions make utilization of the rear parking area far more difficult, if not impossible, for a person with Mr. Fortson's disabilities.

Under this view, as stated in Section 3(G), there exists “. . . extremely unique circumstances and hardships due to the physical characteristics of the property and the applicant’s disability” which justify an exception to the policy stated in Section 3(B).

The Americans with Disabilities Act and the Americans with Disability Act Amendments Act (ADA and ADAAA), 42 U.S.C. §§ 12131, *et seq.* require that the County accommodate one who is disabled where there is off-street parking that is “available”, but which is not “accessible” as that term is defined in the operative statutes and regulations. The requirement of accessibility is incorporated into the Maryland code and regulations. *See* Ann. Code of Md, Trans. Art. § 21-1005 (requires accommodation for a person with a permanent disability) (County Exhibit 4), and Code of Maryland Regulations (COMAR) § 11.16.03.06 permits denial of an application for a reserved parking spot only if the resident has “adequate and **accessible**” off-street parking. (Emphasis supplied). (County Exhibit 3). In addition, the ADA and the ADAAA, *supra*, as well as all of the associated Maryland requirements, direct that all relevant circumstances are to be interpreted liberally in favor of a disabled applicant in all contexts. *See e.g., PGA Tour, Inc. v. Martin*, 532 U.S. 661, 676-77 (2001); *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 495-96 (2007); *Clare v. Conifer Value Based Care, LLC*, 982 F.Supp.2d 582, 598-99 (D.Md.2013). *And see* 29 C.F.R. §§ 1630.2(g)-(h) emphasizing that the definitions in the ADA and ADAAA should be “broadly construed in favor of expansive coverage.” For the purposes of this case, the Board finds that either: (1) there is no “available” off-street parking because the off-street parking is not “accessible” or (2) the lack of “accessible” off-street parking justifies utilizing the exception in § 3(G).

Accordingly, the decision of the Baltimore County Division of Traffic Engineering shall be reversed and the application for the reserved handicapped parking space shall be granted.

ORDER

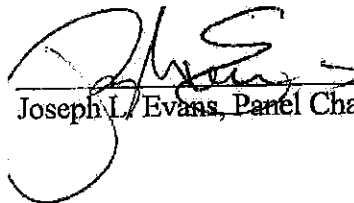
THEREFORE, IT IS THIS 4th day of October, 2022, by the Board of Appeals of Baltimore County,

ORDERED that the decision of the Division of Traffic Engineering dated March 21, 2022 in Case No. CBA-22-044 be and the same is hereby **REVERSED**; and it is further

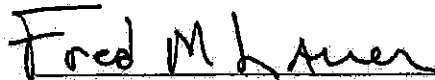
ORDERED that the application of Brian Fortson for a reserved handicapped parking space at 5425 Whitlock Road, Baltimore, Maryland 21229, be, and the same hereby is, **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Joseph L. Evans, Panel Chair



Fred M. Lauer



Sharonne R. Bonardi



Board of Appeals of Baltimore County

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October 4, 2022

Brian P. Fortson
5425 Whitlock Road
Baltimore, Maryland 21229

RE: *In the Matter of: Brian P. Fortson*
Case No.: CBA-22-044

Dear Mr. Fortson:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, reading "Sunny Cannington", with a stylized flourish at the end.

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

- c. Michael Soriano, Manager/Investigative & Security Division/Motor Vehicle Administration
Joseph A. "Jay" Doyle, Project Manager/Housing and Community Development
Angelica Daniel, Chief/Division of Traffic Engineering
D'Andrea L. Walker, Acting Director/Department of Public Works
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law